

STATE OF MICHIGAN  
COURT OF APPEALS

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UNITED HOME BUILDERS, INC.,

Plaintiff-Appellee,

v

CITY OF SOUTHFIELD,

Defendant-Appellant.

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UNPUBLISHED  
December 8, 2000

No. 217218  
Oakland Circuit Court  
LC No. 97-002109-CZ

Before: Bandstra, C.J., and Fitzgerald and D. B. Leiber\*, JJ.

MEMORANDUM.

Defendant appeals by leave granted from a circuit court order denying its motion for summary disposition pursuant to MCR 2.116(C)(8) and (10). We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff purchased three vacant lots in Southfield on which to build houses. The city, for a fee, issued permits allowing plaintiff to connect the houses to the city's sanitary sewer. Either the sewer leads for two of the lots were missing or were present but were not connected to the sewer, causing plaintiff to incur extra expense in connecting the houses to the sewer system. It sought to recoup that expense from defendant in this breach of contract action.

The trial court's ruling on a motion for summary disposition is reviewed de novo. *Gibson v Neelis*, 227 Mich App 187, 189; 575 NW2d 313 (1997). A motion brought under MCR 2.116(C)(10) tests the factual support for a claim. In ruling on such a motion, the trial court must consider not only the pleadings, but also depositions, affidavits, admissions and other documentary evidence, MCR 2.116(G)(5), and must give the benefit of any reasonable doubt to the nonmoving party, being liberal in finding a genuine issue of material fact. Summary disposition is appropriate only if the opposing party fails to present documentary evidence establishing the existence of a material factual dispute. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999).

"The essential elements of a contract are parties competent to contract, a proper subject matter, legal consideration, mutuality of agreement, and mutuality of obligation." *Mallory v*

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\* Circuit judge, sitting on the Court of Appeals by assignment.

*Detroit*, 181 Mich App 121, 127; 449 NW2d 115 (1989). Mutuality of agreement, or a meeting of the minds, means that “[t]here must be a meeting of the minds on all the material facts in order to form a valid agreement, and whether such a meeting of the minds occurred is judged by an objective standard, looking to the express words of the parties and their visible acts.” *Groulx v Carlson*, 176 Mich App 484, 491; 440 NW2d 644 (1989). The plaintiff bears the burden of proving the existence of the contract sought to be enforced. *Kamalnath v Mercy Mem’l Hosp Corp*, 194 Mich App 543, 549; 487 NW2d 499 (1992).

The fact that defendant issued a permit for a fee did not create a contractual relationship between the parties. *Midwest Teen Centers, Inc v Roseville*, 36 Mich App 627, 630; 193 NW2d 906 (1971). While the evidence submitted by plaintiff shows that both sides shared a mistaken belief that the sewer leads were present and connected, it does not show that the city agreed to enter into a contractual relationship with plaintiff. Accordingly, we find that the trial court erred in denying defendant’s motion for summary disposition.

Reversed and remanded for entry of judgment for defendant. We do not retain jurisdiction.

/s/ Richard A. Bandstra  
/s/ E. Thomas Fitzgerald  
/s/ Dennis B. Leiber